

UNITED STATES OF AMERICA
FEDERAL MEDIATION AND CONCILIATION SERVICE
CASE NO. 06-54672

IN THE MATTER OF ARBITRATION)	
BETWEEN)	DECISION
)	
COUNCIL OF PRISON LOCALS C-33)	
AFGE LOCAL 1302, FLORENCE, CO.)	OF
)	
UNION)	JOHN R. SWANSON
)	
and)	
)	ARBITRATOR
FEDERAL BUREAU OF PRISONS)	
FLORENCE, CO.)	JUNE 15, 2009
EMPLOYER)	
)	**REAFFIRMATION OF AWARD**
Re: Portal-to-Portal Pay)	

BACKGROUND

The Arbitrator can find no rationale or justification for the Bureau of Prisons failing to implement the Portal to Portal Pay decision of April 4, 2007.

The Bureau of Prisons was instructed to promptly appoint, together with AFGE Local 1302, a joint Union/Management Committee to review all relevant records, logs, videos and any other appropriate documents for the purpose of determining which Officers would be compensated and how much compensation was due each Officer.

Information has reached the Arbitrator showing the Bureau of Prisons has not complied and/or cooperated in the formation of the joint committee. If the Bureau of Prisons had a different view of the back-pay calculations, it should have presented it to the Arbitrator. However, it was a generally accepted fact that if the Arbitrator found for the Union, the parties would work together to calculate, in good faith, any and all amounts owed to Correction Officers involved in the watch changeover. The Bureau would not either through delay or by withholding appropriate data frustrate the process. It is the Bureau's responsibility to pay the Correction Officers for time worked and there is no dispute that watch changeover is time worked. As learned Counsel for the Government knows, there are numerous cases where this matter has been

appealed and in *Lindow v. United States* 738 F., 2d 1057 (9th Circ. 1984), the court applied a diminimus rule and found that the claim was (1) irregular and (2) difficult or impractical for the administration to record. (*Lindow*, 738 F. 2d at 1063-64) In contrast, given the testimony of the Bureau of Prisons and the Correction Officers, watch changeovers are (1) regular and (2) not difficult or impractical for the Bureau to monitor and record. Again, I completely reviewed the entire record in detail and there can be only one irrefutable conclusion – Correction Officers are entitled to be compensated for watch changeovers which were the subject of the Arbitration hearing. In addition, reviewing numerous court decisions and Collective Bargaining Agreements, there can be no reasonable dispute - the only reasoned interpretation of the CBA provisions addressing the definition of wages is unambiguous and clear – the Bureau of Prisons must compensate the employees for watch changes.

With the recent election, the Government consistently emphasizes “change” – a change in attitudes, a change in the way we treat each other, a change regarding the respect and recognition due working people and those who are identified as the ‘middle class’. Everyone with any understanding or knowledge of the Bureau of Prisons recognizes the difficult circumstances, responsibilities and personal sacrifice involved in the work of a Correction Officer and in particular, the officers involved in Super Max. It is the responsibility of the Agency not to make this issue a continuing problem and to implement the Arbitrator’s Award in good faith and as soon as the necessary calculations can be accomplished.

ORDER

The Bureau of Prisons, Florence, CO and AFGE Local 1302, Florence, CO upon receipt of this Order and within no more than fourteen (14) days, will appoint a committee of three (3) AFGE Local 1302 members and three (3) Bureau of Prisons members.

This joint committee will meet to review all relevant data necessary to determine the amounts owed the Correction Officers for watch changeover. They will meet on a regular basis of not less than four (4) days a week unless otherwise, mutually agreed to by the parties to provide a more workable schedule. Such meeting time by the Union Committee members will be considered official time and it will be compensated for by the Bureau of Prisons.

The Committee is directed to complete the review and implement the findings no later than October 1, 2009. If the Committee has not completed the assignment by October 1, 2009 or the parties have not

reached a mutually agreeable compromise, they will submit the results of their joint efforts to the Arbitrator who will then determine the liability and compensation owed by the Bureau of Prisons to the Correction Officers.

If both parties feel it is in their respective interests, a formal hearing can be scheduled before the Arbitrator following October 1, 2009.

John R. Swanson, Arbitrator

DATED: June 15, 2009